



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

April 12, 2021

By ECF

The Honorable Ronnie Abrams
United States District Judge
40 Foley Square
Southern District of New York
New York, New York 10007

**Re: United States v. Michael Hild,
19 Cr. 602 (RA)**

Dear Judge Abrams:

The Government writes to follow up on certain issues raised at the final pre-trial conference on April 9, 2021.

First, with respect to the testimony of Dennis Hamilton, the Government writes to inform the Court that, upon further reflection, it will no longer seek to offer the evidence regarding comparable bonds to which the defendant objects. The Government remains committed to calling Mr. Hamilton to present summary testimony and a graphic representation regarding the relationship between the prices at which Live Well purchased bonds and the prices at which it listed those bonds on IDC. We understand that the defendant does not object to this testimony. In light of the above, we believe this issue is now moot.

Second, with respect to the recorded calls that the Government intends to introduce, the Government has agreed to substantially all of the defendant's suggested additions to those calls. Specifically, beyond the 1,258 lines of transcripts that the Government initially marked, the Government has now agreed to include 2,265 additional lines and to introduce into evidence the corresponding parts of the recordings.¹ Although the Government does not believe all of these additions are required under the rule of completeness, the Government has agreed to the proposed additions because they may be admissible under other theories.

The parties have been unable to reach an agreement on a single call, GX 412. The Government initially marked eight lines of transcript for the hour-long call, as reflected in yellow highlighting on page 9 of the transcript, attached hereto. Defense counsel counter-proposed that

¹ The Government does not intend to play the entirety of the lengthy recordings to the jury; rather, it will play selected clips.

the entirety of the hour-long call and 44-page transcript be marked. The Government is willing to agree to the defendant's request to include the portion of the transcript highlighted in green that precedes the portion that the Government originally marked. Together these portions of the transcript total 12 minutes of the recording. The Government objects, however to the defendant's request to introduce the 35 additional pages highlighted in blue, which amount to an additional 48 minutes of recording time.

The Rule of Completeness does not require accepting the defense proposal to mark the remaining 48 minutes of the call. In the very beginning of the call, Darren Stumberger notes that they have "two things we need to dissect here. One, what have rates done this month....Number two, all of the moves in marks and all of the gymnastics, what has that caused?" (Lines 17-26). The first half of the call then proceeds to discuss the second point: the moves in marks, *i.e.*, the changes in bond prices made by Live Well. Beginning at line 237 (page 9), the call clearly shifts to a discussion of the change in rates and how that macroeconomic factor could affect the bond portfolio going forward, as well as how different assumptions in that regard might justify price changes. The rate discussion is neither explanatory nor relevant to the prior part of the call, which discusses changes that Live Well has made to the bond marks due in order to manipulate its financial statements and extract cash from lenders. Accordingly, the Court should exclude the latter portion of the call.²

As noted, defense counsel disagrees with the Government's assessment and intends to submit a letter on this topic later today, April 12. The parties are not requesting a ruling from the Court on this issue in advance of opening statements, and expect that it will come up at the earliest on Wednesday, April 14.

Respectfully submitted,

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United States Attorney

by: _____/s/
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cc: Counsel for Michael Hild (by ECF)

² Defense counsel has also counter-proposed marking the call through line 304. However, because the rate discussion begins at line 237, there is no basis to mark this additional portion of the call.